

**Seneca Insurance Company, Inc.  
160 Water Street  
New York, New York 10038**

**NAIC COMPANY 10936**

**MARKET CONDUCT EXAMINATION REPORT**

**As of  
December 31, 2002**

**PREPARED BY INDEPENDENT CONTRACTORS  
IN COORDINATION WITH  
COLORADO DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF INSURANCE**

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160 Water Street  
New York, New York 10038**

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**Prepared by**

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April 30, 2003

The Honorable Doug Dean  
Commissioner of Insurance  
State of Colorado  
1560 Broadway Suite 850  
Denver, Colorado 80202

Commissioner Dean:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., a targeted examination of the Seneca Insurance Company's Bail Bond business has been conducted. The Company's records were examined at the home office located at 160 Water Street, New York, New York. 10038. The examination covered the calendar year of January 1, 2002, to December 31, 2002.

A report of the examination of the Seneca Insurance Company, Inc. is, herewith, respectfully submitted.

John J. Postolowski, CIE, MA, FLMI, AIRC, ACS  
Chief Examiner, Market Conduct Section

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**MARKET CONDUCT  
EXAMINATION REPORT  
OF THE  
SENECA INSURANCE COMPANY**

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## **COMPANY HISTORY AND PROFILE**

Seneca Insurance Company, Inc. (the “Company”) was incorporated on March 29, 1978, under the laws of New York as Eagle Star Insurance Company of America. Following a change in ownership and management, the present title was adopted on April 8, 1987. The Company was licensed and began Colorado operations on July 24, 1987. The Company began writing bail bonds in Colorado on November 12, 1997. The Company is a part of Seneca Insurance Group, which is a wholly-owned subsidiary of Fairfax Financial Group. The Company’s home office is located in New York, New York.

The Company was issued a multi line Certificate of Authority from the Colorado Division of Insurance on July 24, 1987. The Company is licensed in D.C., Puerto Rico, and in all fifty (50) states. The Company writes multiple lines of property and casualty insurance including surety and bail bonds.

The affairs of the company are under the direction of Douglas M. Libby, president and chief executive officer.

The Company’s chief executive officers at this writing are: Douglas M. Libby, president and chief executive officer, Marc T. Wolin, treasurer and chief financial officer, Stephen L. Abbott, vice president and general counsel, Chris Stormo, vice president, Admed Ibrahim, vice president, Frank Donahue, vice president, Mel Funk, vice president.

The Company has engaged Bail USA to oversee its bail bond department. Bail USA performs numerous functions and provides essential services for the Company.

Bail bond business is produced by approximately fifteen (15) direct contracted independent licensed bail bond supervising agents along with approximately seven (7) licensed subagents for all business produced in Colorado.

The Company does not actively advertise bail bond business within the state of Colorado.

A market conduct examination report was prepared by the State of New York Insurance Department on January 26, 2001. An examination of the financial condition of the Company began on April 23, 2001 for the period of January 1, 1997 through December 31, 2000.

An annual independent audit of the company is conducted by PricewaterhouseCoopers, LLP. An annual evaluation of reserves for unpaid losses and loss adjustment expenses is made by William M. Mercer, Inc.

In 2002, the Company reported 3,273\* bail bonds in force in Colorado. Based on figures reported to the Colorado Division of Insurance, the Company had \$2,127,057\* in bail bond gross written premium.

\*Data as reported by the Company

## **PURPOSE AND SCOPE OF EXAMINATION**

This targeted market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado insurance law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the targeted examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles relating to bail bond insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report, the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 through December 31, 2002.

File sampling was based on a review of underwriting files randomly selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings. The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which contained no errors, was omitted.

An error tolerance level of plus or minus (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systematic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Bail Bond issues and contains information regarding exceptions to the Colorado insurance law.

The examination included a review of the following seven (7) Company operations:

1. Company Operations and Management
2. Marketing and Sales
3. Complaint Handling
4. Producers/Agents
5. Underwriting: Applications, Forms and Rates
6. Policyholder Services
7. Claim Handling, including forfeiture judgments and return of collateral

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner.

Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.



### **EXAMINATION REPORT SUMMARY**

The Company reported 3,273 bail bonds in force during the calendar year of 2002 from which fifty (50) were systematically selected to be reviewed for compliance with Colorado insurance law. The report reflects records examined from five (5) primary agents and seven (7) subagents for a total of twelve (12) agents subject to examination located within various territories of operation.

The examination resulted in eleven (11) compliance issues due to the failure of the Company and its producers' to comply with Colorado insurance laws that govern all property and casualty insurers operating in Colorado. The following is a summary of the examiners' findings by category:

#### **Company Operations and Management:**

In the area of company operations and management, two (2) compliance issues are addressed in this report. These issues are due to the Company's failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issues in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable Colorado Statutes and Regulations. The issues in this category are identified as follows:

- Failure to adequately monitor agents' activities.
- Permitting agents to charge additional fees for bail bonds in violation of Colorado insurance law.

#### **Marketing and Sales:**

In the area of Marketing and Sales, no compliance issues are addressed in the report.

#### **Complaint Handling:**

In the area of complaint handling, no compliance issues are addressed in the report.

#### **Producers/Agents:**

In the area of Producers/Agents, nine (9) compliance issues are addressed in this report. These issues are due to company agents' failure to adhere to Colorado insurance laws pertaining to bail bond business. Regarding the compliance issues in this area it is recommended that the Company review its current procedures for monitoring agents' activities and implement routine external auditing of agents to assure future compliance with applicable Colorado Statutes and Regulations as to each issue. The issues in this category are identified as follows:

- Failure, in some cases, of agents to comply with agent reporting requirements to the Division of Insurance.
- Failure, in some cases, of agents to sign and/or maintain bonding agreements as required.
- Failure, in some cases, of agents to return collateral within ten working days.
- Failure, in some cases, of agents to report proper premium to the Company.
- Failure, in some cases, of agents to provide a list of collateral to the Company.
- Failure, in some cases, to register assumed (trade) name with the Colorado Division of Insurance.
- Failure, in some cases, to display the required fraud statement on the applications.
- Failure, in some cases, of agents to provide written premium/collateral receipts.
- Failure, in some cases, of agents to fulfill fiduciary responsibilities by commingling funds.

**Underwriting:**

In the area of underwriting, no compliance issues are addressed in the report.

**Policyholder Services:**

In the area of policyholder services, no compliance issues are addressed in the report.

**Claim Handling, including forfeiture Judgments and Return of Collateral:**

In the area of claims, no compliance issues are addressed in the report.

**SENECA INSURANCE COMPANY**

**FACTUAL FINDINGS**

**BAIL BONDS**

**MARKET CONDUCT EXAMINATION**

**FACTUAL FINDINGS**

**COMPANY OPERATIONS AND MANAGEMENT**

**Issue A: Failure to adequately monitor producers' activities.**

Section 10-1-127, C.R.S. – Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, requires, in part:

(6)(a) On and after January 1, 1997, every licensed insurance company doing business in Colorado shall prepare, implement, and maintain an insurance anti-fraud plan; except that this subsection (6) shall not apply to entities whose principal business is the assumption of reinsurance, reinsurance agreements, or reinsurance claims transactions. Insurance companies approved by the commissioner under article 5 of this title may be required, as a condition of such approval, to maintain an insurance anti-fraud plan. Each anti-fraud plan shall outline specific procedures, appropriate to the type of insurance provided by the insurance company in Colorado, to:

(I) Prevent, detect, and investigate all forms of insurance fraud, including fraud by the insurance company's employees and agents, fraud resulting from false representations or omissions of material fact in the application for insurance, renewal documents, or rating of insurance policies, claims fraud, and security of the insurance company's data processing systems:

Seneca Insurance Company has procedures established to audit and monitor its producers activities, but has failed to provide **adequate monitoring** (emphasis added) which appears to be a violation of the following statutes.

**1. Section 12-7-105, C.R.S. – Reports and records required – bonding agents requires in part:**

(1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division **no later than November 1 of each year.** (Emphasis added.) Such report shall include but is not limited to the following information:

Two (2) agents failed to provide their annual reports to the Division by the required due date of November 1, 2002. This appears to be a violation of Colorado insurance law.

**2. Section 12-7-108, C.R.S. – Bonding agreement – requirements – payment schedule, states in part:**

(1) A bonding agreement shall be **in writing and signed by the bail bonding agent and the principal.** (Emphasis added.) If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

In thirty-seven (37) of the bail bond files examined, the agents did not sign the bonding agreement. In two (2) files examined, there was no written bonding agreement in the files. This appears to be a violation of Colorado insurance law.

3. Section 12-7-109, C.R.S.- Prohibited activities penalties states, in part:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(d.5) Except for the fee received for the bond, **failure to return any collateral or security within ten working days** (emphasis added) after receipt of a copy of the court order...

(k) All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received.

In seven (7) of the bond files examined where collateral was taken, it appears the agents did not return the notes that were collateralizing the bonds within the ten (10) working days. The notes used by the agents are due upon demand even if the agents are released of all liability, therefore they should have been returned in accordance with the Statute. This appears to be a violation of Colorado insurance law.

4. Section 10-2-704, C.R.S., Financial Responsibilities, states, in part:

(1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

(1)(b) All premiums received, less commissions authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date ...

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

III Rule

(B) Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

(1). Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and

(2). The insurance producer must keep an **accurate record** (emphasis added) of all fiduciary funds, and. . .

In fourteen (14) bail bond files examined, the agents charged the client a 10% premium in the majority of the files, however, reported to the Company that the client was charged a premium of 15%. This appears to be a violation of Colorado insurance law.

5. Section 12-7-107, C.R.S., Notice to surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefore. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

In thirty-one (31) bail bond files reviewed where collateral was taken, the agents failed to list and report the collateral to the Company as required. This appears to be a violation of Colorado insurance law.

6. Section 10-2-701, C.R.S., Assumed names-registration, states:

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

Seven (7) of the twelve (12) agents examined were conducting business under an assumed (Trade) name which had not been registered with the insurance commissioner. The Company failed to ensure that its agents had registered any (trade) name being used. This appears to be a violation of Colorado insurance law.

7. Section 10-1-127 C.R.S. states:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

**"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines denial of insurance, and civil damages. An insurance company or agent of an insurance**

**company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

In twenty-nine (29) bail bond files reviewed, the applications failed to display the required fraud statement. This appears to be a violation of Colorado insurance law.

**8. Section 12-7-109, C.R.S., Prohibited activities - penalties, states in part:**

(1)(k) Except for the fee received for the bond, failure to return any collateral or security within ten working days after receipt of a copy of the court order... Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a **written receipt** (emphasis added) to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received...

In fifteen (15) bail bond files examined, there was no proof of a written premium and/or collateral receipt. This appears to be a violation of Colorado insurance law.

**9. Section 10-2-704, C.R.S., Fiduciary responsibilities, states:**

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

**Section 12-7-109, C.R.S., Prohibited activities - penalties, states:**

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity



shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section [12-7-103](#) (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states:

### III Rule

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. Upon receipt the insurance producer must treat all premium and return premiums as trust funds and segregate them from his own funds, and
2. The insurance producer must keep an accurate record of all fiduciary funds, and
3. The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

A review of the bail bond agents' business banking accounts revealed that one (1) agent appears to have commingled his personal funds with his fiduciary trust funds contrary to statute. This appears to be a violation of Colorado insurance law.

**Recommendation # 1:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-1-127, 10-2-701, 10-2-704, 10-3-1104, 12-7-105, 12-7-107, 12-7-108, 12-7-109 and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures related to the monitoring of all of its agents' activities to ensure compliance with Colorado insurance law.

**Issue B: Permitting agents to charge additional fees for bail bonds in violation of Colorado insurance law.**

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states, in part:

(2) Except for bond filing fees charged by a court or law enforcement agency and the actual cost of storing collateral in a secure self-service public storage facility, no bail bonding agent licensed under this article shall charge for such bail bonding agent's premium, commission, or fee an amount more than fifteen percent of the amount of bail furnished by such bonding agent or twenty dollars, whichever is more.

The wording of the Company rate filing states, in part:

“These rates must be charged by ALL agents of Seneca Insurance Company, Inc. These rates are for premium only, and do not include other expenses incurred, such as telephone, posting fees, writs, travel and other miscellaneous expenses.”

The Company rate filing appears to indicate the expenses for telephone, posting fees, writs, travel and other miscellaneous expenses may be charged in addition to the filed rate of 15%. The Statute specifies what fees are allowed to be charged in addition to the premium. This places the Company in apparent violation of Colorado insurance law.

**Recommendation # 2:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to correct charging of additional bail fees to ensure compliance with the Colorado insurance law.

**FACTUAL FINDINGS**  
**PRODUCERS / AGENTS**

**Issue C: Failure, in some cases, to comply with agent reporting requirements to the Division of Insurance.**

Section 12-7-105, C.R.S., Reports and records required – bonding agreements – division, states, in part:

(1) Commencing November 1, 2000, each licensed bail bonding agent shall provide a report to the division **no later than November 1** (emphasis added) of each year. Such report shall include but is not limited to the following information: . . .

Agents review for 2002			
Agent Population	Sample Size (primary agents)	Number of Exceptions	Percentage to Sample
12	5	2	40%

The review of the five (5) primary bail bonding agents annual reports for 2002 revealed that two (2) agents failed to remit their annual reports by the required due date of November 1, 2002. This appears to be a violation of Colorado insurance law.

**Recommendation # 3:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-105, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to monitoring agent reporting requirements to ensure accuracy and compliance with the Colorado insurance law.

**Issue D: Failure, in some cases, of agents to sign and/or maintain bonding agreements as required.**

Section 12-7-108, C.R.S., Bonding agreement – requirements – payment schedule, states, in part:

(1) A bonding agreement shall be **in writing and signed by the bail bonding agent and the principal.** (Emphasis added.) If the principal is illiterate or does not read the English language, such bail bonding agent shall note on the agreement that he or she has read or translated the bonding agreement to the principal, and a copy of the translation shall be attached to the agreement.

**Bail bonds in force for 2002**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	39	78%

In thirty-seven (37) of the fifty (50) bail bond files examined in five (5) offices of bail bonding primary agents, the bonding agreements used failed to display the agent's signature, and in two (2) files in one (1) agent's office, there was no written bonding agreement. This is in possible violation Colorado insurance law.

**Recommendation # 4:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-108, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure that agents sign the bonding agreement as required by Colorado insurance law.

**Issue E: Failure, in some cases, of agents to return collateral within ten working days.**

Section 12-7-109, C.R.S., Prohibited activities-penalties, states, in part:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(d.5) Except for the fee received for the bond, **failure to return any collateral or security within ten working days** (emphasis added) after receipt of a copy of the court order...

(k) All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible **for the return of all such collateral taken** (emphasis added) and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received.

**Bail bonds in force for 2002**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	7	14%

In seven (7) bail bond files, which involved collateral, of the fifty (50) examined in the five (5) primary agents' offices, in one (1) agent's office it appears the agents did not return the notes that were collateralizing the bonds within the ten (10) working days. The notes used by the agents are due upon demand even if the agents are released of all liability, therefore they should have been returned in accordance with the Statute. This appears to be a violation of Colorado insurance law.

**Recommendation # 5:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures to ensure that agents properly return collateral as required by Colorado insurance law.

**Issue F: Failure, in some cases, of agents to report proper premium to the Company.**

Section 10-2-704, C.R.S., Agent fiduciary responsibilities states, in part:

(1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.

(1)(b) All premiums received, less commissions authorized, shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibility, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states, in part:

### III. RULE

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

2. the insurance producer must keep an **accurate record** (emphasis added) of all fiduciary funds, and

**Bail bonds in force for 2002**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	14	28%

**Reporting statistics**

<b>OVER REPORTED</b>	<b>UNDER REPORTED</b>
(11) \$5,590.00	(2) \$70.00

In thirteen (13) of the fifty (50) bail bond files examined in five (5) offices of bail bonding primary agents, gross premiums charged by these agents appear to have been incorrectly reported to the Company. There were eleven (11) over reported gross premiums totaling \$5,590.00, and two (2) under reported premiums totaling \$70.00. In one (1) file examined, the agent was tardy in remitting the premium of the bond to the insurer within the statutory time frame of forty-five (45) days after receipt as well as the contractual due date. This affects the accuracy of premium taxes paid by the Company to the Division of Insurance as discussed in the Company operations and management section of this report. This appears to be a violation of Colorado insurance law.



**Recommendation # 6:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-704, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed and implemented all procedures relating to the accuracy of premium reporting by agents to ensure compliance with the Colorado insurance law.

**Issue G: Failure, in some cases, of agents to provide a list of collateral to the Company**

Section 12-7-107, C.R.S., Notice to Surety, states:

(3) The bail bonding agent shall prepare a list of all collateral taken for assurance of compliance with the bond issued and the fee paid therefor. The bail bonding agent shall provide such list to the surety within twenty days of taking the collateral. Failure to provide this written list to the surety, keep a file of all such lists for two years following the end of the calendar year in which each was prepared, or provide the list or a copy thereof to the commissioner on request is a violation of this section and shall be a ground for revocation of the bail bonding agent's license.

**Bail bonds in force for 2002**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	31	62%

In thirty-one (31) bail bond files, which involved collateral, out of the fifty (50) bail bond files reviewed in the five (5) offices of bail bonding primary agents, four (4) agents failed to provide the Company with a list of the collateral received. This is a possible violation of Colorado insurance law.

**Recommendation #7:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-107, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures relating to collateral lists to surety to ensure compliance with Colorado insurance law.

**Issue H: Failure, in some cases, to register assumed (trade) name with the Colorado Division of Insurance.**

Section 10-2-701, C.R.S., - Assumed names-registration, states:

“Any insurance producer using an assumed name, including without limitation a trade or fictitious name, under which the insurance producer conducts business shall register the name with the insurance commissioner prior to using the assumed name. The commissioner shall not accept registration of any name that is similar to another currently on file, that would tend to be misleading to the public, or that is identical or similar to the name of any producer whose license has been revoked or suspended. Every insurance producer licensee shall promptly file with the commissioner a written notice of any change in or discontinuation of the use of any name. The commissioner may promulgate all rules necessary and proper to implement the provisions of this section.”

**Agents review for 2002**

<b>Agent Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
12	12	7	58%

A review of the five (5) bail bonding primary agents and seven (7) subagents showed that seven (7) of these agent's failed to register assumed (trade) names used with the Division of Insurance. This review represented forty (40) of the fifty (50) bail bond files examined. This appears to be a violation of Colorado insurance law.

**Recommendation # 8:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-2-701, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented procedures to monitor and ensure registration of agents assumed (trade) names as required by Colorado insurance law.

**Issue I: Failure, in some cases, to display the required fraud statement on all bail bond applications.**

Section 10-1-127, C.R.S., Fraudulent insurance acts-immunity for furnishing information relating to suspected insurance fraud-legislative declaration, states:

(7)(a) On and after January 1, 1997, each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

**"It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies."**

**Bail bonds in force for 2002**

<b>Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	29	58%

In twenty-nine (29) of the fifty (50) bail bond files examined in five (5) offices of bail bonding agents, the applications used by three (3) agents failed to display the required fraud statement. This is a possible violation of Colorado insurance law.

**Recommendation # 9:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-1-127, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures regarding use of applications displaying the required fraud statement necessary to ensure compliance with Colorado insurance law.

**Issue J: Failure, in some cases, of agents to provide written premium/collateral receipts.**

Section 12-7-109, C.R.S., Prohibited activities - penalties, states, in part:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. **When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. . . .** (Emphasis added.)

**Bail bonds in force for 2002**

<b>Agent Population</b>	<b>Sample Size</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
3,273	50	15	30%

In fifteen (15) of fifty (50) bail bond files reviewed in the five (5) offices of the bail bonding primary agents, in four (4) agent's offices there was no proof of a written premium and/or collateral receipt provided to clients. This appears to be a violation of Colorado insurance laws.

**Recommendation # 10:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 12-7-109, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to written premium/collateral receipts to ensure compliance with the Colorado insurance law.

**Issue K: Failure, in some cases, of agents to fulfill fiduciary responsibilities by commingling funds.**

Section 10-2-704, C.R.S., Fiduciary responsibilities, states:

(3) No insurance producer under this article shall commingle premiums belonging to insurers and returned premiums belonging to insureds with the producer's personal funds or with any other funds except those directly connected with the producer's insurance business.

Section 12-7-109, C.R.S., Prohibited activities - penalties, states:

(1) It is unlawful for any licensee under this article to engage in any of the following activities:

(k) Accept anything of value from a person on whose bond such licensee is indemnitor or from another on behalf of such principal except the premium; except that the bail bonding agent licensed under this article may accept collateral security or other indemnity from the person on whose bond such bail bonding agent is indemnitor or from another on behalf of such principal. All such collateral or other indemnity shall be returned pursuant to the requirements contained in paragraph (d.5) of this subsection (1). The bail bonding agent licensed under this article shall preserve and separately retain such collateral and shall be responsible for the return of all such collateral taken and shall be liable for failure thereof as will also be the surety company. When a bail bonding agent accepts collateral as security pursuant to this paragraph (k), such bail bonding agent shall give a written receipt for such collateral to the person on whose bond such bail bonding agent is indemnitor or to another on behalf of such principal and the surety, which shall provide in detail a full description of the collateral received. In the event of the failure of or inability for any reason of a bail bonding agent or such bail bonding agent's heirs or assignees to return collateral as required in this paragraph (k), the commissioner or the commissioner's designee is authorized to take immediate possession of the collateral and take whatever actions are necessary and appropriate to assure compliance with the obligations of this article relating to the return of collateral. The commissioner is authorized to utilize any or all of the qualification bond required in section [12-7-103](#) (3) for any costs incurred. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation. The commissioner shall forfeit a qualification bond in the amount necessary to pay any final, nonappealable judgment award for failure to return collateral, including costs and attorney's fees, if awarded.

Regulation 1-2-1, Concerning Agent Fiduciary Responsibilities, promulgated under the authority of §§ 10-1-108(8), 10-1-109, 10-2-220 and 10-3-1110, Colorado Revised Statutes (C.R.S.), states:

### III Rule

B. Upon receipt, the insurance producer must treat all premiums and returned premiums in a fiduciary capacity, including but not limited to the following:

1. Upon receipt the insurance producer must treat all premium and return premiums as trust funds and **segregate them from his own funds** (emphasis added), and
2. The insurance producer must keep an accurate record of all fiduciary funds, and
3. The insurance producer must not treat insurance premiums or returned premiums as a personal or business asset, and . . .

**Bail bonds in force for 2002**

<b>Agent Population</b>	<b>Sample Size (Primary Agents)</b>	<b>Number of Exceptions</b>	<b>Percentage to Sample</b>
12	5	1	20%

A review of the five (5) bail bonding primary agent's business banking accounts revealed that one (1) agent appears to be commingling their personal funds with their fiduciary funds trust account contrary to statute. This review represented ten (10) out of the fifty (50) files reviewed. This appears to be a violation of Colorado insurance laws.

**Recommendation # 11:**

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-2-704 and 12-7-109, C.R.S. and Regulation 1-2-1. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed, revised and implemented all procedures relating to the handling of funds received by agents to ensure compliance with the Colorado insurance law.

**Summary of Issues and Recommendations**

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